

STATE OF NORTH CAROLINA COUNTY OF AVERY

The Avery County Board of Commissioners met in a Special Meeting on Tuesday, January 13, 2009 at 3:30 p.m. in the Commissioners Boardroom, Avery County Administrative Complex, Newland, NC. The purpose of the Special Meeting was to discuss and act upon, including vote upon, the submission of the request of final plat approval of The Fall's at Hawk's Crossing; formalization of the referral of The Fall's at Hawk's Crossing subdivision variance request to the Avery County Planning Board; changes to the Avery County Subdivision Ordinance.

Members Present: Kenny Poteat, Chairman; Phyllis Forbes, Vice-Chair; Scott Heath; Martha Hicks; Glenn Johnson

Members Absent: None

Call To Order

Chairman Poteat called the meeting to order at 2:10 p.m.

Chairman Poteat led prayer.

The Fall's at Hawk's Crossing

Chairman Poteat stated that the purpose of this meeting is to discuss The Fall's at Hawk's Crossing and some related issues.

Michaëlle Poore, County Attorney, advised that at the last meeting there was some discussion as to whether or not the final plat was submitted to the Board of Commissioners for approval. The County Attorney stated there was a request from the Ordinance Administrator for final approval of The Fall's at Hawk's Crossing. She said that the ordinance requires that a final plat be submitted to the planning board 7 days before the planning board meeting and the final plat was submitted November 21 and the meeting was November 25. The planning board minutes does not indicate that the planning board made a recommendation on the final plat and the planning board must make a recommendation on the final plat before the Board of Commissioners can consider the final plat, said the County Attorney. She stated that before the Commissioners can consider the final plat that there has to be compliance with the improvement and guarantee of the ordinance. The County Attorney referred to the final plat checklist and stated that the first requirement of the checklist has not been met. She advised that the first resolution presented to the Board states that based on the findings that this matter is not appropriate to come before the Board of Commissioners at this time, that the variance issue has not been reached and all these matters need to be addressed before the final plat approval is requested. The County Attorney stated it is appropriate to have the resolution to document the fact that the administrative provisions have not been met and have the planning board consider at the next meeting. She said the next planning board meeting would be the 22nd of January, 2009 at 5:30 p.m. The County Attorney advised that Ester Manheimer with the Van Winkle Firm out of Asheville had been notified of this special meeting and that the County Attorney had spoken with Ms. Manheimer regarding the meeting and Ms. Manheimer had received a copy of the agenda of this special meeting.

The Board took a few minutes to read over the resolutions prepared by the County Attorney.

Chairman Poteat questioned the County Attorney as to what the section 205 alluded to in the resolutions. The County Attorney answered that Section 205 is the section where the variance is applied for and criteria that the variance is granted which that issue has not been addressed. She stated that Section 311 addressed phased developments. The County Attorney advised that there are two resolutions that would need to be addressed today; the final plat resolution and the resolution that remanded the variance back to the planning board. Chairman Poteat stated that the "buck stops here" pertaining to the decision of final plat approval by the Board of Commissioners. Martha Hicks questioned if a variance was given on this development if the County and the fire departments would be liable. The County Attorney answered that what the Board is looking at today is really sending this back to the planning board and that is one of the issues that the planning board can look at. The County Attorney stated that the Board needed input from the planning board about possibly a secondary water source for the fire departments.

Chairman Poteat stated that the larger packet resolution denying the request for final plat approval would be named Exhibit A and the smaller packet resolution remanding the variance back to the planning board would be named Exhibit B.

Chairman Poteat asked the County Attorney to send the two resolutions to the attorney, Ester Manheimer, for The Fall's at Hawk's Crossing. The County Attorney advised that the developer will have the opportunity to address both issues at the planning board meeting.

Motion by Phyllis Forbes and second by Scott Heath to approve the Resolution (Exhibit A) denying the request for final plat approval and remanding back to the Avery County Planning Board. Motion unanimously approved.

Motion by Glenn Johnson and second by Scott Heath to approve the Resolution (Exhibit B) remanding the request for a variance back to the Avery County Planning Board. Motion unanimously approved.

Avery County Subdivision Ordinance Changes

The County Attorney stated there has been some questions regarding the applicability of the subdivision ordinance specifically whether or not special subdivisions as defined under the ordinance have to meet the requirements of

Section 405 which is the section pertaining to road construction and what is being requested for the Board to do is ask the Avery County Planning Board to make a recommendation clarifying the language on specifically looking as to whether or not the road provisions should apply whenever the property is split that is located in a developed subdivision or a developed area. She said the planning board could make that recommendation at the meeting on January 22, 2009 and if the Board felt it was appropriate depending upon the recommendation of the planning board they could thereafter add any language to clarify the subdivision ordinance and this would require a public hearing. She advised that the road requirements are based on what size subdivision there is. The County Attorney was asked to explain this issue further. She stated there has been a question come up regarding the applicability of the road provisions of the subdivision ordinance in regard to special subdivisions. The Ordinance has a couple of sections that specifically apply to special divisions such as lot size and the procedure for submitting a plat but silent on the issue of roads, stated the County Attorney. She advised that this would be a clarification of the information in the ordinance. She said this would be a request of a recommendation to the planning board regarding special subdivisions as set out in the ordinance and review procedures for special subdivisions if they are located in a development or developed area and whether or not the planning board thinks that an amendment, clarification or additional language is appropriate to the ordinance in regard to that issue.

Motion by Phyllis Forbes and second by Scott Heath to approve the request of a recommendation to the planning board regarding special subdivisions as set out in the ordinance and review procedures for special subdivisions if they are located in a development or developed area and whether or not the planning board thinks that an amendment, clarification, or additional language is appropriate to the ordinance in regard to this issue and have the County Attorney submit some proposed language to the planning board. Motion unanimously approved.

Chairman Poteat stated that the public was always welcome but didn’t call on the public for any comments at this meeting because it was not in keeping with the wording of this special meeting but if and when a special meeting is needed one will be called so all parties can talk and be heard. Chairman Poteat advised that the Avery County Planning Board will meet on January 22, 2009.

Motion by Phyllis Forbes and second by Glenn Johnson to adjourn this meeting at 3:49 p.m. Motion unanimously approved.

Kenny Poteat, Chairman
Avery County Board of Commissioners

ATTEST:

Cindy Turbyfill, Clerk